

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, December 10, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Mary Voelker
Walter Tarmann

BOARD MEMBERS ABSENT:

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Town of Merton Board of Adjustment
Mike Thiele, BA03:100, son and nephew of the petitioners
James Purcell, BA03:102, petitioner
Mark Bischel, BA03:103, petitioner
Art Fink, BA03:103, neighbor
Hans Weissgerber, Jr., BA03:104, petitioner
Bill Rheineck, BA03:105, owner of Rheineck Motors
Daniel & Catherine Lange, BA03:095, petitioners
Linda Sherick, Hapka Contracting, Inc., Landscape Architect,
BA03:095
Roger Schmid, BA03:097, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of November 12, 2003.*

The motion was seconded by Ms. Voelker. A discussion ensued. Ms. Voelker then removed her second and Mr. Bartholomew revised his motion.

Mr. Bartholomew *I revise my motion to approve the Summary of the Meeting of November 12, 2003, to include a correction on Page 3. In the case of BA03:099, the motion should read:*

I make a motion to approve this request, in accordance with the staff's recommendation, with the Conditions stated in the Staff Report, and for the reasons stated in the Staff Report. However,

the recommended Condition No. 4 shall be deleted and replaced with the following: “The petitioner shall seek the advise of a Landscape Architect to provide for permanent vegetation to be placed below the wood walls to help screen them from view or be planted at the top of the walls and cascade over the walls in order to help screen the walls from the visual impact by lake users and that such a landscape plan be developed and implemented by September 2004, and be submitted for review and approval by the staff prior to installation of plant material by May 1, 2004.”
(change underlined)

The revised motion was seconded by Ms. Voelker and carried unanimously.

NEW BUSINESS:

BA03:100 TIM & TOM THIELE

Ms. Voelker

I make a motion to adopt the staff’s recommendation for approval, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report, with a sixth condition added to read as follows:

“Prior to the Director of the Waukesha County Department of Parks and Land Use affixing his signature to the proposed Certified Survey Map, proof that Outlot A, Certified Survey Map Vol. 4, Page 67 is owned by one or both of the petitioners must be submitted to the Planning and Zoning Division staff.”

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Mr. Schultz abstained because he is the architect for the proposed addition to the existing residence on Lot 1, Certified Survey Map Vol. 4, Page 67.

The staff’s recommendation was for approval, with the following conditions:

1. Lot 2 of the proposed Certified Survey Map must remain at least 2 acres in size, including the area of the pond.
2. The minimum road setback for a residence and a detached garage on Lot 1 of the proposed Certified Survey Map shall be 25 ft. from the edge of the road right-of-way of Atkins Knoll Rd., as shown on the proposed Certified Survey Map. The road setback shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the buildings must be located the additional distance from the Atkins Knoll Rd. right-of-way as the overhangs exceed two (2) ft. in width.
3. The approved building envelope for proposed Lot 1 must be shown on the Certified Survey Map.

4. A note referencing this Board of Adjustment action must also be placed on the face of the Certified Survey Map.
5. The pending Certified Survey Map must be approved by the Town of Summit and the Planning and Zoning Division staff and recorded in the Waukesha County Register of Deeds office, prior to the issuance of a zoning permit for a residence and detached garage on the proposed Lot 1.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, is not contrary to the public interest and will permit four non-conforming lots of record to be re-configured into three lots that will be more conforming and provide a more efficient use of the land. The location of the pond, the ingress-egress easement, and the road right-of-way of Atkins Knoll Rd., as well as the steep slopes and the awkward lot configurations are unique property features that create a hardship and justify approval of the requested variances. Granting road setback variances from Atkins Knoll Rd., which is a minor dead-end road that is not even constructed in the area north of the proposed residence, will not create a safety hazard and will not adversely affect any of the surrounding property owners or the general public. Further, granting road setback variances from Atkins Knoll Rd. will allow the building envelope for the residence to be located farther north, which will provide a deeper and more reasonable building envelope for the residence, and it will allow the construction of a detached garage with the same road setback as the residence. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA03:102 JAMES & MARYANN PURCELL

Mr. Schultz *I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Voelker. A discussion ensued. Ms. Voelker then removed her second and Mr. Schultz revised his motion.

Mr. Schultz *I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report, with the recommended Condition #1 changed to read as follows:*

"This approval is for remodeling and expansion of the existing residence, as noted in the application, and does not authorize the replacement of the existing residence with a new residence on the same foundation. If the proposed construction changes from remodeling and expansion of the residence to replacing the existing residence with a new residence on the same foundation, as was apparently indicated in the preliminary site evaluation application submitted to the Environmental Health Division, this matter shall be brought back to the Board of Adjustment for reconsideration under "Old Business". (change underlined)

The revised motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. This approval is for remodeling and expansion of the existing residence, as noted in the application, and does not authorize the replacement of the existing residence with a new residence on the same foundation. If the proposed construction changes from remodeling and expansion of the residence to replacing the existing residence with a new residence on the same foundation, as was apparently indicated in the preliminary site evaluation application submitted to the Environmental Health Division, a new variance application will need to be submitted and another public hearing will be scheduled with the Board of Adjustment.
2. Certification from a registered architect or certified building inspector that the existing foundation and walls are adequate to support the proposed second floor addition and second story deck, must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit to remodel and expand the residence.
3. The proposed second floor addition shall not extend any closer to the road or the east lot line than the existing residence.
4. Prior to the issuance of a zoning permit, a complete set of final house plans, showing the exact size of the proposed "bonus room" over the attached garage and indicating the area of that room with at least 6 ft. of ceiling height, must be submitted to the Planning and Zoning Division staff for review and approval.
5. If the final house plans indicate that the "bonus room" over the garage will contain a closet, the Environmental Health Division must certify that the existing septic system is adequate for a four-bedroom residence, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
6. A detailed cost estimate, prepared by a building contractor, must be submitted to and approved by the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
7. The non-conforming shed must be removed from the property or relocated to a conforming location, no later than six (6) months after the issuance of a zoning permit for the proposed remodeling and expansion. Note: A zoning permit must first be obtained before the shed is relocated to a conforming location.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will result in a reasonable expansion of a non-conforming residence, in keeping with other development in the area. The proposed expansion will bring the residence into conformance with the minimum required house size. The proposed second floor addition will extend no closer to the road or the east lot line than the existing residence, thus requiring special exceptions, rather than variances, from the road setback and offset requirements. Special exceptions do not require the demonstration of an unnecessary hardship. The proposed remodeling and expansion will not adversely affect the lake or the neighboring property owners and is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA03:103 MARK BISCHEL

Mr. Ward *I make a motion to adopt the staff's recommendation for approval, as stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The new garage must be at least 10 ft. from the detached garage on the adjacent lot to the south.
2. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The proposed garage will be located in a conforming location, with the utilization of the road setback averaging and "clustering" provisions of the Ordinance, and it will decrease the floor area ratio and increase the open space on the property, while providing more useful storage space in a more aesthetically appealing structure. Due to the size of the lot, a hardship exists with respect to the floor area ratio and open space requirements. It is impossible to meet the minimum open space requirement of 10,000 sq. ft. because the lot area is only 8,234 sq. ft. A conforming floor area ratio of 15% does not provide a reasonable use of the property because it would permit a total floor area of only 1,251 sq. ft., which is less than the required minimum house size of 1,300 sq. ft. and which would permit only a small one-car garage of 233 sq. ft. Similarly, a garage in conformance with the maximum permitted accessory building floor area ratio of 3%, would permit only a 247 sq. ft. garage. More than a one-car garage is needed to provide additional storage space on the property because the residence does not have a basement, only a crawlspace. Finally, the approval of this request, with the recommended conditions, will not adversely affect the adjacent properties or the lake and is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA03:104 HANS WEISSGERBER, JR. (Golden Mast Inn)

Ms. Voelker. *I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew. A discussion ensued. Mr. Bartholomew then removed his second and Ms. Voelker revised her motion.

Ms. Voelker. *I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report, with the addition of a third condition to read as follows:*

"The lower level of the proposed addition shall be used as a garbage storage area only, with the garbage containers placed inside."

The revised motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. An application to revise the Plan of Operation for the restaurant to include the proposed addition must be submitted to the Town of Oconomowoc and to the Planning and Zoning Division staff. That revised Plan of Operation must be reviewed and approved by the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission. All conditions of those approvals must be met and the Plan of Operation Permit must be issued, prior to the issuance of a zoning permit for the proposed addition.
2. Prior to the issuance of a zoning permit for the proposed addition, a set of State-approved building plans must be submitted to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow the construction of a minor addition to a substantial structure, which has been permitted to be remodeled and expanded in the past. The proposed addition will eliminate an unsightly outdoor garbage storage area that is highly visible from the lake. The proposed addition will not adversely affect the lake or the surrounding properties and is not contrary to the public interest. Finally, since the proposed addition will be farther from the lake and the floodplain than the existing building, it requires only special exceptions, rather than variances, from the shore and floodplain setback requirements, which do not require the demonstration of an unnecessary hardship. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA03:105 DAVID STABELFELDT (Rheineck Motors)

Mr. Tarmann *I move to approve the request, in accordance with the conditions and reasons stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried with four yes votes. Mr. Schultz voted no.

The staff's recommendation was for approval, with the following conditions:

1. The sign must be located so that no portion extends beyond the base setback line (edge of the 120 ft. wide road right-of-way) of Hwy. 16.
2. In order to ensure conformance with the above condition, a stake out survey showing the proposed location of the sign, as measured to the support post and as measured to the outer edge of the sign face, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit for the new sign.
3. An updated Plan of Operation, including the proposed new sign and any changes proposed for the existing free-standing sign, must be approved by the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission, prior to the issuance of a zoning permit for the new sign.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow the installation of a second free-standing sign that will help to identify all the businesses on the property and be located outside of the road right-of-way. The proposed location of the new sign will not interfere with the asphalt parking area and is consistent with the average road setback of the two adjacent signs and the road setback of other signs in the area. The new sign will be approximately 50 ft. from the pavement, which will not be a safety hazard and is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA03:095 DANIEL & CATHERINE LANGE (held in abeyance from November 12, 2003)

Mr. Voelker

I make a motion to adopt the staff's recommendation for denial of the after-the-fact floodplain setback variance request, as set forth in the Staff Report.

The motion was seconded by Mr. Ward and carried with four yes votes. Mr. Schultz abstained.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. The recently constructed patio is not necessary for the reasonable use of the property, especially since there are two existing decks on the lake side of the residence: a 14 ft. x 24 ft. roof-top deck located above the middle level of the residence and a 10 ft. x 26 ft. concrete deck accessible from the middle level of the residence. In addition, the recently constructed retaining walls could be removed and the site re-graded, with no adverse affect on the property. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

BA03:097 ROGER SCHMID (held in abeyance from November 12, 2003)

Mr. Tarmann

I move to deny the requested accessory building floor area ratio special exception and the requested shore setback, floodplain setback, floor area ratio, and open space variances to permit the construction of a detached garage, but to approve floor area ratio and open space variances to permit the construction of an attached garage to be connected to the residence by a breezeway, subject to the following conditions:

- 1. An attached garage and breezeway, not exceeding 750 sq. ft. in area and located within the conforming building envelope set forth in Exhibit "A" of the December 10th memorandum from Amy Barrows, shall be permitted.*
- 2. The breezeway connecting the garage to the residence shall be a minimum of 6 ft. wide and a maximum of 12 ft. long.*
- 3. The two non-conforming sheds located on the west side of the access drive, shall be removed from the property within one (1) year of the issuance of a zoning permit or upon the completion of the garage and breezeway, which ever occurs first.*
- 4. The installation of side walls in the breezeway shall be optional.*

The reasons for this decision are:

The approval of variances to permit the construction of an attached garage, as conditioned, will result in the removal of two extremely non-conforming structures, while providing the petitioner with a large storage/garage building, all of which will serve to promote the spirit and intent of Ordinance.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. The petitioner could construct a reasonably sized attached garage without the need for any variances or a special exception. The petitioner would be permitted ample area to construct a breezeway between the residence and proposed garage so that the residence would not need to be greatly impacted by the new construction. There is currently a doorway on the side of the residence where a garage could be attached. Furthermore, the detached garage is in conflict with the holding tank offsets from said tank to the detached garage. Therefore, the petitioner's proposal as requested, would not comply with the intent and purpose of the Ordinance and would violate the Environmental Health Code.

OTHER ITEMS REQUIRING BOARD ACTION:

BA02:029 PAUL SCHULTZ (June Casey – original petitioner, Susan Dabel – current owner)

Note: Mr. Schultz left the meeting prior to the deliberation on this case because he is the architect for the proposed addition.

Mr. Tarmann *I move to approve the request for a modification of the approval of April 10, 2002, in accordance with the staff's recommendations, as stated in the memo of December 10, 2003.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes.

The staff's recommendation, as stated in the memo of December 10, 2003, was for approval, with the following conditions:

1. The floor area of the proposed loft area shall not exceed 220 sq. ft.
2. If the proposed addition to the residence is constructed with a loft area, the previous approval authorizing the construction of a 200 sq. ft. boathouse shall be null and void.
3. Prior to the issuance of a zoning permit for an addition with a loft area, the current owner must submit written documentation to the Planning and Zoning Division staff that she is agreeable to the removal of the previously approved boathouse from the request.
4. A detailed cost estimate for the proposed addition to the residence must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
5. Condition Number 1 of the original approval of April 10, 2002, will apply. That condition is *"The storage shed near the shoreline must be removed prior to the issuance of a zoning permit."*
6. All other conditions of the approval of April 10, 2002, as noted below, will also still apply.
 - Prior to the issuance of a zoning permit, a stake-out survey showing the location of the existing and proposed addition, house, deck, patios and any other appurtenances, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
 - Prior to the issuance of a zoning permit, a complete set of house plans, must be submitted to the Planning and Zoning Division staff for review and approval.
 - A detailed grading plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit.

The reasons for the recommendation, as stated in the memo dated December 10, 2003, are as follows:

The requested modification will still result in a conforming floor area ratio of less than 15%. In addition, the elimination of the previously approved boathouse will increase the open space on the property.

ADJOURNMENT:

Ms. Voelker

I make a motion to adjourn this meeting at 10:33 p.m.

The motion was seconded by Mr. Bartholomew and carried with four yes votes. *Note: Mr. Schultz was not present at the time of adjournment because he left the meeting prior to the deliberation on BA02:029.*

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment